

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

**In re: Paul Richard Stewart
Debtor**

**Case No. 20-30038-KLP
Chapter 13**

Donald R. Stewart,

Plaintiff

v.

Paul Richard Stewart,

Defendant

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Adv. Pro. No. 20-03032-KLP

NOTICE OF MOTION

The above named Defendant, by counsel, has filed a Motion to Dismiss Complaint. Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one.

NOTICE IS HEREBY GIVEN THAT A HEARING ON THIS MOTION WILL BE HELD ON June 24, 2020 at 9:30 a.m. in Honorable Keith L. Phillips's Courtroom, U.S. Bankruptcy Court, 701 E. Broad Street, Room 5100, Richmond, VA 23219.

If you want to be heard on this matter, then not later than seven (7) days before the date of the hearing, you or your attorney must:

1. File with the court, at the address below, a written response pursuant to Local Rule 9013-1(H). If you mail your response to the Court for filing, you must mail it early enough so that the Court will **receive** it on or before the date stated above

Clerk of Court
United States Bankruptcy Court
701 E. Broad Street, Room 4000
Richmond, VA 23219-3515

Amanda Erin DeBerry (VSB #83805)
Boleman Law Firm, P.C.
2104 Laburnum Avenue, Suite 201
Richmond, Virginia 23227
(804) 358-9900
Counsel for Debtor/Defendant

2. You must also send a copy to:

Boleman Law Firm, P.C.
2104 Laburnum Avenue, Suite 201
Richmond, Virginia 23227

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion and may enter an Order granting that relief.

Paul Richard Stewart
By Counsel:

/s/ Amanda Erin DeBerry
Amanda Erin DeBerry (VSB #83805)
Boleman Law Firm, P.C.
2104 Laburnum Avenue, Suite 201
Richmond, Virginia 23227
(804) 358-9900
Counsel for Debtor/Defendant

CERTIFICATE OF SERVICE

I certify that on May 22, 2020, a copy of the foregoing was served via first class mail and CM/ECF to W.R. Baldwin, III, counsel for Plaintiff at the address set forth below.

W. R. Baldwin, III
5600 Grove Avenue
Richmond, VA 23226

/s/ Amanda Erin DeBerry
Counsel for Debtor/Defendant

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MOTION TO DISMISS PLAINTIFF'S COMPLAINT

COMES NOW the Defendant, Paul Richard Stewart (the "Defendant"), by counsel, and submits this Motion to Dismiss Plaintiff's Complaint. In support thereof, the Defendant states the following:

1. On April 21, 2020, Plaintiff Donald R. Stewart filed a Complaint ("the Complaint") objecting to the discharge of a debt allegedly owed to Plaintiff by the Debtor.
2. Pursuant to Bankruptcy Rule 4004(a), the deadline to file a complaint in a Chapter 13 case is 60 days after the first date set for the meeting of creditors under §341(a).
3. Debtor's meeting of creditors was scheduled for March 20, 2020.

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4. Plaintiff was listed as a creditor in Debtor's bankruptcy petition, and, as such, was mailed Official Form 309I – Notice of Chapter 13 Bankruptcy Case.

5. The deadline to file an objection to the dischargeability of a debt, per Official Form 309I, was April 20, 2020.

6. The Plaintiff has not timely filed a Complaint against the Debtor objecting to dischargeability of a debt as it was filed with the Court the day after the deadline to do so.

7. Pursuant to Bankruptcy Rule 4004(b)(1), any motion to extend the time to file a complaint "shall be filed before the time has expired."

8. Judge Shelley has previously ruled on this issue, stating that when the language of 4004(b) was changed to state that the motion shall be filed before the deadline has expired, the Court lost its discretion to extend the time to object to discharge after the deadline has expired. See *In re Lane*, 37 B.R. 410 (Bankr. E.D.Va., 1984).

9. Therefore, Plaintiff's Complaint should be dismissed pursuant to Bankruptcy Rule 4004.

10. Debtor further notes that the Complaint which was filed was deficient, both in failure of Counsel to sign the Complaint, but in numerous other inconsistent and inaccurate instances throughout the complaint, including, but not limited to incorrectly identifying the parties in the initial paragraph of the complaint.

11. A Notice of Deficient filing was issued on April 22, 2020, with a deadline to correct the deficiency by May 6, 2020. The remedy for failure to correct is normally an automatic dismissal of the Complaint, however in this case an Order to Show Cause

was issued.

12. To date, the Plaintiff has neither attempted to correct the initial deficiency, nor responded to the Order to Show Cause.

13. No certificate of service has been filed with the Court, and Plaintiff avers that he has not been served pursuant to Rule 7004, however this response and Motion to Dismiss is being filed out of an abundance of caution as counsel for Debtor did receive electronic notice of the filings.

14. To the extent a response is required, Defendant denies the allegations set forth in Plaintiff's complaint, and demands strict proof thereof.

15. Pursuant to Bankruptcy Rule 7012(a), a responsive pleading must be filed within 30 days of the issuance of the summons. This Motion to Dismiss is timely filed.

WHEREFORE, the Defendant respectfully prays that this Court:

- A. Dismiss the Plaintiff's Complaint;
- B. Award Defendant such other and further relief as is just.

Paul Richard Stewart

By: /s/ Amanda Erin DeBerry
Amanda Erin DeBerry (VSB #83805)
Boleman Law Firm, P.C.
2104 Laburnum Avenue, Suite 201
Richmond, Virginia 23227
(804) 358-9900
Counsel for Debtor/Defendant

CERTIFICATE OF SERVICE

I certify that on May 22, 2020, a copy of the foregoing was served via first class mail and CM/ECF to W.R. Baldwin, III, counsel for Plaintiff at the address set forth below.

W. R. Baldwin, III
5600 Grove Avenue
Richmond, VA 23226

/s/ Amanda Erin DeBerry
Counsel for Debtor/Defendant